

REMARKS / ARGUMENTS

Claims 1-8 and 25-27 are pending in this application. Claims 1, 4, 25, and 26 are currently amended. Claim 27 is new.

Claims 1, 4, 25, and 26 have been amended to more particularly define Applicant's invention in light of the prior art of record. Claims 1, 25, and 26 have been amended to recite that the core layer comprises from 70% to 90% styrene homopolymer. Basis for this amendment can be found on page 5, para 21 of the present specification. Claim 4 has been amended to delete the limitation that the polystyrenic layer comprises 70% to 90% polystyrenic polymer.

In the Office Action, the Examiner has maintained the rejections of claims 1-3 under 35 U.S.C. § 102 as being anticipated by U.S. Patent No. 4,897,274, issued to Candida et al. (herein, "Candida") and as being anticipated by U.S. Patent No. 6,479,138, issued to Childress (herein, "Childress"). The rejection of claims 1-8, 25 and 26 under 35 U.S.C. § 103 as being unpatentable over Childress was also maintained.

Applicant respectfully traverses the Examiner's prior art rejections under 35 U.S.C. § 102(b). The present claims require that the compatibilizing layer comprise less than one percent by weight substantially random interpolymer. The present specification defines "substantially random interpolymer" as a polymer or copolymer as described in U.S. Patent No. 6,376,095 to Cheung et al. (para. 32). In the Response filed January 13, 2005, Applicant pointed out that neither Candida nor Childress teach or disclose less than one percent by weight of a substantially random interpolymer made in accordance with Cheung et al. Applicant clearly defined the term "substantially random interpolymer" in the specification to be a polymer or copolymer as described in Cheung et al. (page 7, para 32). Thus, Applicant respectfully traverses the Examiner's assertion that the claimed invention is not limited to Cheung et al.'s substantially random interpolymer. Applicant points out that the written description may restrict the scope of the claims if "the patentee demonstrated an intent to deviate from the ordinary and accustomed meaning of a claim term by redefining the term or by characterizing the invention in the intrinsic record using words or expressions of manifest exclusion or restriction, representing a clear disavowal of claim scope." *Teleflex, Inc. v. Ficosa N. Am. Corp.*, 299 F.3d 1313, 1327 (Fed.Cir.2002). Applicant respectfully submits, therefore, that the Examiner's rejection is an error.

Nonetheless, Applicant has amended the claims to recite that the core layer comprises from 70% to 90% styrene homopolymer. Childress includes a linear random alpha-olefin/vinyl aromatic copolymer or an ethylene copolymer in the core layer. Candida includes a core layer of a butadiene-styrene

copolymer. Neither Candida nor Childress teach or disclose a multi-layer film having a core layer comprising a styrene homopolymer. Accordingly, Applicant respectfully requests the Examiner to withdraw this rejection.

Applicant respectfully submits that the present claims, as amended, also overcome the Examiner's rejection of claims under 35 U.S.C. § 103(a) as being unpatentable over Childress. Applicant notes that to establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). MPEP §2143.03, 8th Ed. (Rev. 2, 2004). Further, "[o]bviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art." MPEP §2143.01, 8th Ed. (Rev. 2, 2004). Applicant respectfully points out that the present claims, as currently amended, specify that the core layer comprises from 70% to 90% styrene homopolymer. Childress, on the other hand, teaches a linear random alpha-olefin/vinyl aromatic or ethylene copolymer in the core layer. Childress does not disclose a core layer comprising a styrene homopolymer as recited in the presently amended claims. Furthermore, there is no teaching or direction to modify Childress to arrive at the presently claimed invention. Accordingly, Applicant respectfully requests the Examiner to withdraw this rejection.


Applicant submits that based on the foregoing, claims 1-8 and 25-27 are allowable over the cited prior art. Applicant further requests that a timely Notice of Allowance be issued in this case.

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Should any further questions arise concerning this application or in the event the above amendments do not place the application in condition for allowance, Applicant respectfully requests an interview with the examiner and the examiner's supervisor prior to any new office action relating to the present Application. Attorney for the Applicant may be reached at the number listed below.

Respectfully Submitted,

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